

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GOVX, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	
SHIPPING AND TRANSIT LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	

**COMPLAINT FOR DECLARATORY JUDGMENT
OF PATENT NON-INFRINGEMENT AND INVALIDITY**

Plaintiff, GovX, Inc. (“Plaintiff” or “GovX”), by and through its undersigned counsel, submits its Complaint for Patent Non-Infringement and Invalidity against Defendant, Shipping and Transit LLC (“Defendant” or “S&T”) (the “Complaint”).

1. GovX seeks a declaration from this Court that (1) it does not infringe U.S. Patent Nos. 6,317,060 (the “’060 Patent”); 6,904,359 (the “’359 Patent”); 6,952,645 (the “’645 Patent”); and 7,400,970 (the “’970 Patent”) (attached hereto as Exhibits A-D and referenced together as the “Patents-in-Suit”); and (2) the Patents-in-Suit and/or certain claims in the Patents-in-Suit are invalid and/or unenforceable.

THE PARTIES

2. GovX is a Delaware corporation with its principal place of business at 7817 Ivanhoe Ave., Suite 200, La Jolla, CA 92037. Anthony Farwell, Marc Van Buskirk, and Shannon Van Buskirk founded GovX in part to support service members, veterans, and first responders. GovX owns and operates GovX.com, the leading e-commerce site serving active, reserve, retired, and veteran military; first responders; law-enforcement officers; and many other government personnel. GovX and its partners believe in thanking those who serve and protect

our country and communities. GovX members can purchase goods, gear, and services from over 200 premium brands at discounted prices unavailable to the general public. Much of the gear GovX offers is tactical gear, which GovX members use to carry their missions forward.

3. On information and belief, S&T is a Florida limited liability company with its principal place of business at 714 SW 24th Avenue, Boynton Beach, FL 33435. S&T does not practice the Patents-in-Suit. Instead, it acquired the Patents-in-Suit from ArrivalStar S.A., a notorious patent litigant that filed dozens of lawsuits claiming infringement of the Patents-in-Suit. Like its predecessor ArrivalStar, S&T seeks nuisance-value settlements for alleged infringement of the Patents-in-Suit. But, S&T has yet to successfully establish that any of the companies it has sued for patent infringement, or threatened to sue for patent infringement, actually infringed the Patents-in-Suit.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 with respect to claims arising under the patent laws, 35 U.S.C. §§ 101 *et seq.*, and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*

5. Upon information and belief, this Court has personal jurisdiction over S&T because S&T has directed a threat of litigation against GovX in this District, has engaged in or solicited business in this District, has derived revenue from other residents of this District, and/or has engaged in other courses of conduct in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

FACTUAL BACKGROUND

A. S&T Targeted GovX With a Letter Falsely Alleging That GovX Infringes the Patents-in-Suit and Demanding a Nuisance-Value Settlement.

7. As stated above, GovX is an online retailer that sells goods and services at privileged prices to active, reserve, and retired members of the U.S. Armed Forces as well as active and retired employees of federal, state and local governments, particularly law enforcement, fire, and emergency response agencies. It does so through an e-commerce web site, www.GovX.com. Through that e-commerce site, GovX promotes and sells goods and services of its vendor-partners.

8. When a customer makes a purchase from GovX.com, GovX automatically sends the customer a confirmation email.

9. Typically, when a customer makes a purchase from GovX.com, GovX's vendor-partners directly make arrangements with their designated shipping service (*e.g.* FedEx, United Parcel Service, the United States Postal Service, *etc.*) to ship the package to the customer. On information and belief, some shipping companies like FedEx, UPS, and USPS have licenses to the Patents-in-Suit. On information and belief, those licenses cover the activities of GovX and/or its vendor-partners who employ the shipping services to ship packages to GovX customers.

10. When a GovX vendor-partner has shipped a package to a GovX customer, the GovX vendor-partner communicates a package tracking number to GovX. GovX then provides the customer a package tracking number and a link to a Google search, which, if the customer clicks the Google link, in turn provides the customer a link to the shipping company's web site. Once GovX provides the customer the package tracking number and the link to the Google

search, GovX completes its interaction with the customer with regard to the shipping and delivery of that customer's purchase.

11. On June 15, 2015, S&T sent a letter to GovX threatening to sue GovX for infringement of the Patents-in-Suit, among other unidentified patents S&T alleges that GovX infringes. In its letter, S&T demanded a lump sum license fee of \$45,000 for a license to the Patents-in-Suit as well as to the entirety of S&T's U.S. and Canadian patent portfolios. In short, S&T followed a typical strategy of a non-practicing entity—seek a nuisance-value settlement of weak infringement claims based on fanciful reading of patent claims and specifications.

B. The Patents-in-Suit Cover Vehicle Tracking, Which GovX Does Not Do.

12. The four Patents-in-Suit are directed to methods and systems for tracking vehicles carrying packages being shipped to consumers and for informing consumers of the locations of the vehicles that are carrying their packages for delivery. In its June 15, 2015 letter, S&T provided rudimentary infringement analysis for Claim 21 of the '359 Patent and Claim 19 of the '060 Patent. S&T also insinuates that GovX infringes Claim 1 of the '359 Patent and Claim 1 of the '970 Patent. GovX discusses each of those claims below.

13. GovX does not track any packages shipped to its customers, does not track any vehicle that carries any package shipped to its customers, does not enable users to specify when they wish to receive notifications, does not receive vehicle or location indicator numbers from its customers, does not create a vehicle status report, does not automatically (or otherwise) identify the proximity of a vehicle, does not present its customers with options including monitoring travel data associated with a vehicle carrying a package, does not ask its customers for a package identification number or package delivery number related to delivery of a package, does not

identify a vehicle based on such a package identification or delivery number, and does not monitor travel data associated with a vehicle delivering a package.

14. Claim 1 of the '359 Patent recites:

1. A method for a notification system, the method for allowing a user to define when the user is to receive a vehicle status report relating to the status of a mobile vehicle, in relation to a location, the method comprising the steps of:

[a] permitting the user to predefine one or more events that will cause creation and communication of the vehicle status report by the following steps:

[i] permitting the user to establish a first communication link with a host computer system using a user communications device that is remote from the host computer system and the vehicle whose travel is being monitored, the host computer system being remote from the vehicle;

[ii] receiving during the first communication link at the host computer system an identification of the one or more events relating to the status, wherein the one or more events comprises at least one of the following: distance information specified by the user that is indicative of a distance between the vehicle and the location, location information specified by the user that is indicative of a location or region that the vehicle achieves during travel, time information specified by the user that is indicative of a time for travel of the vehicle to the location, or a number of one or more stops that the vehicle accomplishes prior to arriving at the location;

[iii] storing the predefined one or more events in memory associated with the host computer system;

[b] analyzing data indicative of travel of the mobile vehicle;

[c] initiating a second communication link from the host computer system to a remote communications device to be notified, when appropriate, based upon occurrence of the predefined one or more events and from the data indicative of travel; and

[d] delivering the vehicle status report from the host computer to the notified remote communications device during the second communication link, the vehicle status report indicating occurrence of the one or more events. (emphasis added).

15. Among other things, GovX does not: (1) permit a user to predefine events that will cause creation and communications of a vehicle status report; (2) does not receive an identification of one or more events related to status; (3) does not analyze data indicative of travel of a mobile vehicle; (4) does not initiate a second communications link based upon the predefined events and data indicative of vehicle travel; and (5) does not deliver a vehicle status report indicating occurrence of the one or more user-defined events.

16. Claim 21 of the '359 Patent recites:

21. A method comprising the steps of:

[a] permitting a user to predefine at a computer system one or more events that will cause creation and communication of a notification relating to the status of a mobile vehicle in relation to a location, wherein the one or more events comprises at least one of the following: distance information specified by the user that is indicative of a distance between the vehicle and the location, location information specified by the user that is indicative of a location or region that the vehicle achieves during travel, time information specified by the user that is indicative of

a time for travel of the vehicle to the location, or a number of one or more stops that the vehicle accomplishes prior to arriving at the location;

[b] tracking movement of the vehicle as it moves toward the location; and

[c] communicating a notification on a status of the vehicle from the computer system to a user communication device upon occurrence of the one or more events by the vehicle during the travel, the user communication device being a general-purpose communications device that is remote from the location and the vehicle whose travel is being monitored and that is designed to communicate with other communications devices that are undedicated to the computer system, wherein the computer system is located remotely from the vehicle. (emphasis added).

17. Among other things, GovX does not: (1) permit a user to predefine events that will cause creation and communications of a notification relating to the status of a mobile vehicle in relation to a location; (2) does not track movement of a vehicle as it moves toward a location; and (3) does not communicate a notification based on the status of a vehicle whose status is being monitored.

18. Claim 19 of the '060 Patent recites:

19. A method for notifying users of impending arrivals of vehicles at particular locations, comprising the steps of:

[a] storing data associated with a plurality of vehicles;

[b] selecting portions of said data that are associated with notification events expected to occur during a particular time period;

[c] analyzing said selected portions of said data during said particular time period;

- [d] disregarding other portions of said data during said particular time period;
- [e] determining when at least one of said notification events should occur based on said analyzing step; and
- [f] transmitting a notification message in response to said determining step. (emphasis added).

19. Among other things, GovX does not (1) store data associated with a plurality of vehicles; (2) select portions of stored data associated with a plurality of vehicles; (3) analyze selected portions of data associated with a plurality of vehicles; or (4) transmit a notification message based in part on analysis of data associated with a plurality of vehicles.

20. Claim 1 of the '970 Patent recites:

1. A computer based notification system comprising:

[a] means for enabling communication with a user that is designated to receive delivery of a package;

[b] means for presenting one or more selectable options to the user, the selectable options including at least an activation option for instigating monitoring of travel data associated with a vehicle that is delivering the package to the user;

[c] means for requesting entry by the user of a package identification number or package delivery number, each pertaining to delivery of the package;

[d] means for identifying the vehicle based upon the entry;

[e] means for requesting entry by the user of contact information indicating one or more communication media to be used in connection with a notification communication to the user;

[f] means for monitoring the travel data; and

[g] means for initiating the notification communication pertaining to the package via the one or more communication media, based upon the travel data.

21. Among other things, GovX does not (1) present to its customers an activation option for instigating monitoring of travel data associated with a vehicle; (2) request that its customers enter a package identification number or package delivery number; (3) provide its customers means for identifying a vehicle based upon entry of a package identification or delivery number; (4) provide its customers means for monitoring travel data associated with a vehicle; or (5) initiate a notification communication with its customers based upon travel data associated with a vehicle.

22. Accordingly, there is an actual case or controversy between GovX and S&T over non-infringement, invalidity, and unenforceability of the Patents-in-Suit.

COUNT I
NONINFRINGEMENT OF THE '060 PATENT

23. GovX restates and incorporates by references the Paragraphs above as if set forth in full here.

24. As a result of S&T's allegations of infringement and its threat to sue GovX for patent infringement, GovX believes that S&T is contemplating suing GovX for alleged infringement of the '060 Patent. GovX does not believe that it has infringed or is infringing any valid and enforceable claim of the '060 Patent.

25. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement of the '060 Patent, an actual case or controversy exists between GovX and S&T as to whether or not GovX has infringed or is infringing the '060 Patent.

26. GovX, therefore, seeks a judicial declaration that it has not infringed and does not infringe the '060 Patent.

COUNT II
INVALIDITY OF THE '060 PATENT

27. GovX restates and incorporates by reference the Paragraphs above as if set forth in full here.

28. GovX is informed and believes and on that basis alleges that the '060 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of the provisions of 35 U.S.C. §§ 101 *et seq.*, including but not limited to §§ 101, 102, 103, and/or 112.

29. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement, an actual case or controversy exists between GovX and S&T as to the invalidity and/or enforceability of the '060 Patent.

30. GovX, therefore, seeks a judicial declaration that the '060 Patent is invalid and/or unenforceable.

COUNT III
NONINFRINGEMENT OF THE '359 PATENT

31. GovX restates and incorporates by references the Paragraphs above as if set forth in full here.

32. As a result of S&T's allegations of infringement and its threat to sue GovX for patent infringement, GovX believes that S&T is contemplating suing GovX for alleged infringement of the '359 Patent. GovX does not believe that it has infringed or is infringing any valid and enforceable claim of the '359 Patent.

33. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement of the '359 Patent, an actual case or controversy exists between GovX and S&T as to whether or not GovX has infringed or is infringing the '359 Patent.

34. GovX, therefore, seeks a judicial declaration that it has not infringed and does not infringe the '359 Patent.

COUNT IV
INVALIDITY OF THE '359 PATENT

35. GovX restates and incorporates by reference the Paragraphs above as if set forth in full here.

36. GovX is informed and believes and on that basis alleges that the '359 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of the provisions of 35 U.S.C. §§ 101 *et seq.*, including but not limited to §§ 101, 102, 103, and/or 112.

37. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement, an actual case or controversy exists between GovX and S&T as to the invalidity and/or enforceability of the '359 Patent.

38. GovX, therefore, seeks a judicial declaration that the '359 Patent is invalid and/or unenforceable.

COUNT V
NONINFRINGEMENT OF THE '645 PATENT

39. GovX restates and incorporates by references the Paragraphs above as if set forth in full here.

40. As a result of S&T's allegations of infringement and its threat to sue GovX for patent infringement, GovX believes that S&T is contemplating suing GovX for alleged

infringement of the '645 Patent. GovX does not believe that it has infringed or is infringing any valid and enforceable claim of the '645 Patent.

41. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement of the '645 Patent, an actual case or controversy exists between GovX and S&T as to whether or not GovX has infringed or is infringing the '645 Patent.

42. GovX, therefore, seeks a judicial declaration that it has not infringed and does not infringe the '645 Patent.

COUNT VI
INVALIDITY OF THE '645 PATENT

43. GovX restates and incorporates by reference the Paragraphs above as if set forth in full here.

44. GovX is informed and believes and on that basis alleges that the '645 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of the provisions of 35 U.S.C. §§ 101 *et seq.*, including but not limited to §§ 101, 102, 103, and/or 112.

45. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement, an actual case or controversy exists between GovX and S&T as to the invalidity and/or enforceability of the '645 Patent.

46. GovX, therefore, seeks a judicial declaration that the '645 Patent is invalid and/or unenforceable.

COUNT VII
NONINFRINGEMENT OF THE '970 PATENT

47. GovX restates and incorporates by references the Paragraphs above as if set forth in full here.

48. As a result of S&T's allegations of infringement and its threat to sue GovX for patent infringement, GovX believes that S&T is contemplating suing GovX for alleged infringement of the '970 Patent. GovX does not believe that it has infringed or is infringing any valid and enforceable claim of the '970 Patent.

49. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement of the '970 Patent, an actual case or controversy exists between GovX and S&T as to whether or not GovX has infringed or is infringing the '970 Patent.

50. GovX, therefore, seeks a judicial declaration that it has not infringed and does not infringe the '970 Patent.

COUNT VIII
INVALIDITY OF THE '970 PATENT

51. GovX restates and incorporates by reference the Paragraphs above as if set forth in full here.

52. GovX is informed and believes and on that basis alleges that the '970 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of the provisions of 35 U.S.C. §§ 101 *et seq.*, including but not limited to §§ 101, 102, 103, and/or 112.

53. Because of S&T's allegations of infringement and its threat to sue GovX for alleged infringement, an actual case or controversy exists between GovX and S&T as to the invalidity and/or enforceability of the '970 Patent.

54. GovX, therefore, seeks a judicial declaration that the '970 Patent is invalid and/or unenforceable.

PRAYER FOR RELIEF

- A. A declaration that GovX has not infringed and does not infringe any valid or enforceable claim of the Patents-in-Suit.
- B. A declaration that the Patents-in-Suit are invalid and/or unenforceable.
- C. A declaration enjoining S&T, its agents, servants, employees, and/or attorneys from initiating or continuing infringement litigation, from otherwise participating or assisting in infringement litigation, and from threatening GovX, or any of its customers, dealers, agents, servants, or employees with infringement litigation, or charging any of them either verbally or in writing with infringement of the Patents-in-Suit.
- D. A judgment against S&T and in favor of GovX on this Complaint.
- E. Should the case be deemed exceptional, an award to GovX of its reasonable expenses of litigation, including attorneys' fees and expert witness fees.
- F. A judgment limiting or barring S&T's ability to enforce the Patents-in-Suit.
- G. An award of costs as the prevailing party.
- H. Any further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

GovX respectfully requests a trial by jury on all issues so triable.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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